



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 29, 1995

Ms. Mercedes Leal
Senior Assistant County Attorney
Harris County
1001 Preston, Suite 634
Houston, Texas 77002-1891

OR95-1622

Dear Mr. Leal:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. That request was assigned ID# 31988.

The Harris County Sheriff's Department Civil Service Commission received a request for the test for the 1995 examination for captain. The requestor also sought copies of his own and other individuals' answer sheets. It is our understanding that officers seeking promotion to captain took the examination. The test and answer key you submitted to this office contains the test questions, choices of multiple choice answers ranging from "a" to "d," and the correct answers. Officers taking the test wrote their answers on separate answer sheets that do not contain the questions. You contend the answer sheets are excepted from disclosure under section 552.122. You also object to releasing to the requestor any of the requested answer sheets except his own, to protect the privacy of the other individuals who took the examination for promotion.

Section 552.122 excepts in relevant part:

(a) A . . . test item developed by an educational institution that is funded wholly or in part by state revenue

(b) A test item developed by a licensing agency or governmental body.

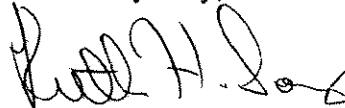
Gov't Code § 552.122. In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122 "includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated." Open Records Decision No. 626 (1994) at 6. The applicability of section 552.122 is determined on case-by-case basis. *Id.* We have reviewed the test questions and answer

key, and agree that this information may be withheld from disclosure pursuant to section 552.122. However, the separate answer sheets that each of the individuals who took the examination filled out are not generally excepted from disclosure under section 552.122. The answer sheets without the corresponding test question sheet does not reveal the test items protected under section 552.122. However, you may withhold the handwritten notes on the answer sheets to the extent that they reveal the *substance* of the test questions.

Section 552.101 excepts from disclosure information "considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 excepts information from disclosure that would be an invasion of privacy under the test set out by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under that test, information is excepted from disclosure by common-law privacy if the information is (1) highly intimate or embarrassing to a reasonable person and (2) of no legitimate public concern. *Id.* Thus, even intimate and embarrassing information may not be withheld from disclosure when there is a legitimate public interest in the information. Generally, the public has a legitimate interest in the job qualifications and performance of public employees. *See* Open Records Decision No. 470 (1987) at 5. The information at issue shows the test scores of public servants seeking a promotion to captain. The answer sheets of the individuals who took the test are not excepted from disclosure by common-law privacy.¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

¹The answer sheets have identification numbers that could be social security numbers. We note that in Open Records Decision No. 622 (1994), this office determined that social security numbers must be withheld under federal law if obtained or maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. It is not apparent to this office, nor do we have any way to determine, whether these identification numbers are social security numbers that must be kept confidential. We note additionally that the Seventy-fourth Legislature has significantly amended the Open Records Act effective September 1, 1995. *See* Act of May 29, 1995, H.B. 1718, sec. 5, § 552.024(a), 74th Leg., R.S. (codified at Gov't Code Ch. 552). We do not address in this ruling whether recent amendments to the Open Records Act will effect requests for this information that are made on or after September 1, 1995.

RHS/rho

Ref.: ID# 31988

Enclosures: Submitted documents

cc: Mr. J.L. Williams
(w/o enclosures)